

09/16/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : 09/805,652
Applicant : Sirimanne
Filed : 03/13/2001
Group Art Unit: 3737
Examiner : Smith, Ruth S.
Docket No. : END-5247USCNT1
Customer No.: 021884
Title : SUBCUTANEOUS CAVITY MARKING DEVICE AND METHOD

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner of Patents and Trademarks
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed July 7, 2010, Appellants respectfully request the following remarks be considered in response to the new arguments presented in the Examiner's Answer.

With regard to the rejection under 35 U.S.C. 112, first paragraph, and the interpretation of the specification being asserted by the Examiner, the Examiner is in error. See Page 3, line 16 through Page 4, line 12.

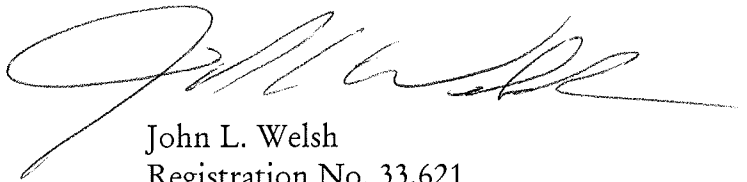
The Examiner takes a single statement from the specification and mistakenly suggests the specification does not provide support for both the claimed body and marker being made

detectable in a single device. In fact, and contrary to the Examiner's assertion, support is found in the specification with reference to Fig. 1F. A marker 150 is shown in a body 144 and both are disclosed as detectable. In particular, note Paragraphs [0053], [0054] and [0060] which clearly disclose the body and marker may be made radiopaque. As such, the specification does provide support for a marker and a body which are both detectable and used together. This is indicative of the disclosed invention.

Further, with regard to Levy, the Examiner has also misinterpreted Levy. As previously pointed out Levy, while disclosing visualization, does not and could not function to mark a cavity below the surface of the skin.

With this in mind, and in addition to the reasons presented in the Appeal Brief filed April 19, 2010, it remains Appellant's opinion the application of Levy to the pending claims is improper and that all outstanding rejections should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John L. Welsh', with a stylized, flowing script.

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